

ALVIN R. ASPELUND

IBLA 71-204

Decided August 31, 1972

Appeal from decision (Anchorage 058983) by Alaska state office, Bureau of Land Management, denying request for reinstatement of a trade and manufacturing site.

Set aside and remanded.

Alaska: Trade and Manufacturing Sites -- Equitable Adjudication:
Substantial Compliance

Equitable adjudication may be invoked to permit consideration of an application to purchase a trade and manufacturing site which was not filed within the time required, where substantial compliance with the law is asserted and the delay is satisfactorily explained.

Withdrawals and Reservations: Effect of

The withdrawal imposed by Public Land Order 4582, as modified, terminated with the enactment of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688.

APPEARANCES: Alvin R. Aspelund, pro se.

Alvin R. Aspelund has appealed from a decision of the Alaska state office, Bureau of Land Management, which denied his request for reinstatement of a trade and manufacturing site. The request was denied for the reasons that an application to purchase was not filed within the five year period provided by law, 1/ and that the land embraced within the claim was withdrawn. 2/

1/ Section 10 of the Act of May 14, 1898 (30 Stat. 413), as amended, 48 U.S.C. § 461a (1958), now 43 U.S.C. § 687a-1 (1970); 43 CFR 2213.1-2(c) (1968), now 43 CFR 2562.3(c) (1972).

2/ Public Land Order 4582 of January 17, 1969, 34 F.R. 1025 (January 23, 1969), as amended by Public Land Order 4962 of December 8, 1970, 35 F.R. 18874 (December 11, 1970).

The notice of location filed by the appellant was received by the Anchorage land office on April 15, 1963. Appellant asserts that he constructed a theatre building on the land, and began doing business there in June of 1964.

Appellant states that in 1966 he travelled 300 miles to the land office and applied for an application to purchase, but was informed not to file his application because a "land freeze" was in effect.

By letter dated December 8, 1970, appellant was informed by the Anchorage district office that his case file was closed because he had not filed his application to purchase within five years from the date upon which he filed his notice of location, and because the land was withdrawn by a "land freeze."

Subsequent to the decision below, Congress enacted the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688). The enactment of this statute terminated the withdrawal of public lands imposed by Public Land Order 4582, as extended by Public Land Order 4962. ^{3/} Therefore, the withdrawal of public lands, which was a basis for denial of relief in the decision below, no longer precludes consideration of appellant's claim on its merits.

The Alaska Native Claims Settlement Act, supra, § 22(b) provides:

The Secretary is directed to promptly issue patents to all persons who have made a lawful entry on the public lands in compliance with the public land laws for the purpose of gaining title to homesteads, headquarters sites, trade and manufacturing sites, or small tract sites (43 U.S.C. 682), and who have fulfilled all requirements of the law prerequisite to obtaining a patent. Any person who has made a lawful entry prior to August 31, 1971, for any of the foregoing purposes shall be protected in his right of use and occupancy until all the requirements of law for a patent have been met even though the lands involved have been reserved or withdrawn in accordance with Public Land Order 4582, as amended, or the withdrawal provisions of this Act: Provided, That occupancy must have been maintained in accordance with the appropriate public land law:

^{3/} See Public Land Order 5081 of June 17, 1971, 36 F.R. 12017 (June 24, 1971).

Provided further, That any person who entered on public lands in violation of Public Land Order 4582, as amended, shall gain no rights.

Where it appears that a claimant has substantially complied with the requirements of the trade and manufacturing site law, but has failed, through an error arising out of ignorance, accident, or mistake, to file an application for patent within the five year statutory period, equitable relief may be afforded to consider the claim on its merits. 43 U.S.C. §§ 1161-1164 (1970); 43 CFR 1871.1; Elizabeth Hickethier, 6 IBLA 306 (1972); C. Rick Houston, 5 IBLA 71 (1972).

In the present case, the record tends to show that appellant substantially complied with the law. It appears that he made a lawful entry and filed a notice of location for the purpose of gaining title. He asserts that he maintained occupancy in accordance with the law, constructed improvements and developed a business. He attempted to file an application to purchase within the time prescribed by law, but through ignorance or mistake, he failed to comply.

Under these circumstances, we are of the opinion that the appellant has satisfactorily explained his failure to submit the required proofs of compliance within the five year statutory period. The Bureau should, therefore, consider his application to purchase under the equitable adjudication provisions of 43 CFR 1871.1 (1972). 4/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is set aside and the case is

4/ While the record indicates that the land embraced within appellant's claim has been selected by the State, there is no indication whether the selection has priority over appellant's rights. In any event, there is in the record a government memorandum of the assistant manager of the Bristol Bay Resources Area which states:

"I called John Frieberg of the State Selections Branch, Alaska Division of Lands. He said the state is not interested in taking the improvements of an individual who has failed to meet our law's requirements through ignorance or oversight. He said they would be happy to withdraw their selection application as to the lots in Aspelund's claim if his case can be reopened or a new claim accepted when 4582 expires."

remanded to the Bureau of Land Management for appropriate action in accordance with this decision.

Frederick Fishman
Member

We concur:

Martin Ritvo
Member

Edward W. Stuebing
Member

